MONTANA LEGISLATIVE HISTORY

Chapter 455 1997

Bill H 789 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 22	✓ C	Hearing Date(s) Mar 26	✓ C
_____	___ C	Apr 01	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out _____	___ C		

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HOUSE BILL NO. 787

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO ORDER THE INVOLUNTARY DISSOLUTION OF CORPORATIONS WITHOUT COURT DECREE; AMENDING SECTIONS 15-2297, 15-2290, AND 15-2354, R.C.M. 1947; AND REPEALING SECTIONS 15-2288, 15-2289, 15-2351, 15-2352, AND 15-2353, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2287, R.C.M. 1947, is renumbered 15-2701 and is amended to read as follows:

"~~15-2287~~15-2701. Involuntary dissolution. ~~(1)~~ ~~A~~ Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by ~~a decree of the district court in an action filed by the attorney general~~ order of the secretary of state when ~~it is established that~~:

(a) ~~The~~ the corporation has failed to file its annual report within the time required by ~~this act~~ law or failed to remit any fees required by law; ~~or~~

(b) ~~The~~ the corporation procured its certificate of incorporation through fraud; ~~or~~

(c) ~~The~~ the corporation has exceeded or abused the authority conferred upon it by law and ~~that~~ such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the ~~attorney general~~ secretary of state; ~~or~~

(d) ~~The~~ the corporation has failed for thirty (30) days to appoint and maintain a registered agent in this state; or

(e) ~~The~~ the corporation has failed for ~~thirty (30)~~ days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 2. There is a new R.C.M. section numbered 15-2702 that reads as follows:

15-2702. Defaulting corporations -- penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 15-2287(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of

state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

Section 3. There is a new R.C.M. section numbered 15-2703 that reads as follows:

15-2703. Revocations of charters of defaulting corporations -- duties of secretary of state -- distribution of corporate assets. (1) On or before October 15 of each year, the secretary of state shall compile a complete list of all defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation's president or secretary; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 15-2287 no longer exist on the following first Monday in March:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) Immediately after the first Monday in March, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 15-2290 or 15-2354, whichever is appropriate, is applicable to liquidate such property and assets if necessary.

Section 4. There is a new R.C.M. section numbered 15-2704 that reads as follows:

15-2704. Reinstatement of defaulting corporations -- duties of secretary of state. (1) If in his judgment it is in the interest of justice, the secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate

privileges and immunities.

(2) No corporation may be reinstated and restored under subsection (1) unless that corporation first satisfies all requirements provided by law and pays to the secretary of state any filing fees, license fees, penalties, costs, and expenses due and in arrears at the time of the revocation of its charter as well as any fees and penalties which have accrued since the revocation of its charter.

(3) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(b) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(4) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

Section 5. There is a new R.C.M. section numbered 15-2705 that reads as follows:

15-2705. Acquisition of new name by defaulting corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has

been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

Section 6. There is a new R.C.M. section numbered 15-2706 that reads as follows:

15-2706. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this act to dissolve corporations that have been in default prior to July 1, 1977.

Section 7. Section 15-2290, R.C.M. 1947, is amended to read as follows:

"15-2290. Jurisdiction of court to liquidate assets and business of corporation. The district courts shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

(1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are

unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the shareholders are deadlocked in voting power, and have failed for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) That the corporate assets are being misapplied or wasted.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this act, to have its liquidation continued under the supervision of the court.

(d) When ~~an action has been filed by the attorney general to dissolve a corporation~~ a corporation has been

dissolved by the secretary of state and it is established that liquidation of its business and affairs ~~should precede the entry of a decree of dissolution~~ is necessary.

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under ~~clause (a), (b), (c), or (e) of~~ this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally."

Section 8. Section 15-2354, R.C.M. 1947, is amended to read as follows:

"15-2354. Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) In an action by a member or director when it is

made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two (2) years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(4) That the corporate assets are being misapplied or wasted; or

(5) That the corporation is unable to carry out its purposes.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is

established that the corporation is insolvent.

(c) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(d) When ~~an action has been filed by the attorney general to dissolve~~ a corporation has been dissolved by the secretary of state and it is established that liquidation of its affairs ~~should precede the entry of a decree of dissolution~~ is necessary.

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally."

Section 9. Repealer. Sections 15-2288, 15-2289, 15-2351, 15-2352, and 15-2353, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 588--77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 18, 19 77, there is hereby submitted a Fiscal Note for House Bill 787 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Authorizes the Secretary of State to order the involuntary dissolution of corporations without court decree.

ASSUMPTIONS:

1. Corporations which default after July 1, 1977 would be dissolved under the procedures of the proposed legislation.
2. 1.50 additional FTE and related operating costs would be required to comply with the proposed legislation.

FISCAL IMPACT:

	FY 78	FY 79	TOTAL
Personal services	$17,359	$17,771	$35,130
Operating expenses	1,600	1,600	3,200
Equipment	3,500	3,500	7,000
Total	$22,459	$22,871	$45,330

There will also be some additional revenue from the fees paid by corporations applying for reinstatement but we are unable to estimate this amount without some experience in the number that will seek reinstatement.

Richard A. Trenga for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-22-77

RUSS LIVERGOOD, MONTANA RETAIL ASSOCIATION:
There is only one area of the bill I would address. We would oppose this bill unless it is amended. He gave prices of things in stores and made the comment that most articles are not under $500. When you lower it you lower the effectiveness of a small claims court. We would lose the effectiveness.

REPRESENTATIVE HOLMES:
I hope the committee will keep in mind that this is for the people. We want to make a small claims court available for the use of the people.

Representative Keyser asked if we are going to have to double the number of JP's.

JUDGE:
No, they do that now.

KEYSER:
How long do you have to keep the records.

JUDGE:
The docket is a court of record and would be kept forever. The other records would be kept for five years.

CHAIRMAN SCULLY:
Explained to the committee the jurisdictional limits.

A general discussion followed about the use of the justice court for retail merchants.

MR. SCULLY:
Asked the judge if he hadn't opposed the bill he, himself, had introduced in 1975.

The judge answered that he had not opposed it, only questioned it.

Mr. Scully commented on the jurisdictional limits of the small claims court and explained the procedure of the small claims court to the committee.

The hearing closed on House Bill #800.

THE HEARING OPENED ON HOUSE BILL #787:
REPRESENTATIVE DRISCOLL, DISTRICT #91:
The bill would authorize the secretary of state to order the involuntary dissolution of corporations without court decree.

MIKE McGRATH, ATTORNEY GENERALS OFFICE:
This will was introduced at our request. We discovered that there was a law on the books to dissolve corporations that had not met

specific requirements. There were about 20,000 delinquent corporations. The requirements for dissolution are the same as under the old law. He presented a copy of the proposed amendments from the secretary of state.

He explained how there are many corporations that are no longer in existence and how the books need to be cleared up. After a short question and answer period, the hearing closed on House Bill #787.

The meeting adjourned at 9:50 a.m.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

HOUSE BILL #797:
REPRESENTATIVE KEYSER moved "do pass".
The motion carried with the vote unanimous.

HOUSE BILL #787:
REPRESENTATIVE LORY presented the proposed amendments, and moved the adoption. The motion carried.
REPRESENTATIVE LORY moved "do pass as amended".
The motion carried with Representative McLane voting "no". (attached

The meeting adjourned at 8:55 for the regular meeting of the Judiciary Committee with scheduled hearings on bills.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

and the amendments of Swanberg.

Joan Knipfer of the American Land Title Co. in Bozeman said that she writes title insurance and opposes Strope's amendment because it defeats the purpose of this bill.

Rep. Ramirez, in closing, said that when this bill was originally heard in the House there was nobody at the hearing. However, after the amendment was proposed, there was a lot of interest. He told the committee that he does not like the amendment as it is for a specific interest, and that he would rather see the bill killed than have the Strope amendment put in the bill. He will fight this in the House if it is accepted here. He also said that he resents the attack on the ethics of the Montana Bar Assn. and attorneys which was made by Mr. Strope in his concluding remarks as that was going beyond the scope of a proponent of a bill.

After some questioning by committee members, the hearing on HB 713 was closed.

CONSIDERATION OF HOUSE BILL 787:

Joe Driscoll, Insurance Commissioner, said that this bill was introduced at the request of the Attorney General because the last session required the Attorney General to dissolve corporations which have not fulfilled their obligations. This bill would assist in the dissolution of corporations by having them done through the office of the Secretary of State.

A proponent of the bill, Mike McGrath of the office of the Attorney General, said that when they got into office they found that one of the things the Attorney General was required to do was bring an action in district court to dissolve corporations which have not fulfilled their obligations. He explained that this bill would give that duty to the Secretary of State and recommended that page 6, line 7, be amended regarding the reinstatement of a corporation which has been dissolved. He asked that the committee delete the word "original" because that could change the amount of the fee.

Some of the staff of the Secretary of State's office was present to answer questions.

CONSIDERATION OF HOUSE BILL 800:

Rep. Holmes of Billings, sponsor of the bill, was not here. Small claim procedures in justice courts are dealt with in this bill. Winn Dowlin, an attorney and justice of the peace in Yellowstone County explained the bill to the committee for Rep. Holmes who had been detained in another committee hearing. He was one of the drafters of this bill which really originated because of circumstances in Yellowstone County. When Rep. Holmes arrived, she apologized for being late and gave some forms to the committee for their information (See Exhibit 2) and asked if they wanted to question the "de novo" inference on page 7. She suggested an amendment to page 8, line 20, to change the "." to a "," and add "an evening session is available at least once a month."

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 1, 1977

The meeting of this committee was called to order on the above date by Sen. Turnage, Chairman, at 9:40 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

EXECUTIVE SESSION

HJR 93 - Sen. Towe moved that HJR 93 BE CONCURRED IN. The motion carried unanimously.

HB 492 - Sen. Towe moved the adoption of the attached amendments except for amendment #6. The motion carried unanimously. Sen. Murray moved the adoption of amendment #6. That motion also carried unanimously. (See Attach. #1) Sen. Roberts then moved that HB 492 as amended BE CONCURRED IN. The motion carried unanimo

HB 544 - Sen. Roberts moved that HB 544 BE NOT CONCURRED IN. The motion carried on a vote of 7 - 1 with Sen. Warden casting the "No" vote.

HB 590 - Sen. Lensink moved that HB 590 BE NOT CONCURRED IN. The motion carried unanimously.

HB 688 - Sen. Olson moved that HB 688 BE NOT CONCURRED IN. The motion carried unanimously.

HB 654 - Sen. Regan moved that HB 654 be laid on the table and put in a subcommittee consisting of Senators Towe and Olson for study with Rep. Meloy. The motion carried unanimously.

HB 738 - Sen. Warden moved that HB 738 be laid on the table and that Joan and Lon be requested to research it and give the details to the committee. The motion carried unanimously.

HB 787 - Sen. Regan moved to strike "original" on page 6, line 7. The motion carried unanimously. She then moved that HB 787 as amended BE CONCURRED IN. The motion carried unanimously.

HB 800 - Sen. Olson moved to amend page 1, line 22, by striki "$500" and inserting "$1,500"; and to amend page 6, line 22, by striking "MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR" and inserti on line 23 "(6) No party may file more than three claims in any calendar year." and then renumber the subsequent subsection. The motion carried unanimously. Sen. Warden then moved that HB 800 as amended BE CONCURRED IN. The motion carried unanimously.

HOUSE BILL NO. 787

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO ORDER THE INVOLUNTARY DISSOLUTION OF CORPORATIONS WITHOUT COURT DECREE; AMENDING SECTIONS 15-2287, 15-2290, AND 15-2354, R.C.M. 1947; AND REPEALING SECTIONS 15-2288, 15-2289, 15-2351, 15-2352, AND 15-2353, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2287, R.C.M. 1947, is renumbered 15-2701 and is amended to read as follows:

"~~15-2287~~15-2701. Involuntary dissolution. (1) ~~A~~ Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by ~~a decree of the district court in an action filed by the attorney general~~ order of the secretary of state when ~~it is established that~~:

(a) ~~The~~ the corporation has failed to file its annual report within the time required by ~~this act~~ law or failed to remit any fees required by law; ~~or~~

(b) ~~The~~ the corporation procured its certificate of incorporation through fraud; ~~or~~

(c) ~~The~~ the corporation has exceeded or abused the authority conferred upon it by law and ~~that~~ such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the ~~attorney general~~ secretary of state; ~~or~~

(d) ~~The~~ the corporation has failed for ~~thirty (30)~~ 60 days to appoint and maintain a registered agent in this state; or

(e) ~~The~~ the corporation has failed for ~~thirty (30)~~ 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 2. There is a new R.C.M. section numbered 15-2702 that reads as follows:

15-2702. Defaulting corporations -- penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in ~~15-2287(1)~~ 15-2701(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the

secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

Section 3. There is a new R.C.M. section numbered 15-2703 that reads as follows:

15-2703. Revocations of charters of defaulting corporations -- duties of secretary of state -- distribution of corporate assets. (1) On or before October ~~15~~ 1 of each year, the secretary of state shall compile a complete list of all defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the ~~corporation's~~ CORPORATION ~~president or secretary~~ IN CARE OF ITS REGISTERED AGENT OR ANY DIRECTOR OR OFFICER; or

(b) ~~by publication~~ of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in ~~15-2287~~ 15-2701 no longer exist on the following first Monday in March:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) Immediately after the first Monday in March, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 15-2290 or 15-2354, whichever is appropriate, is applicable to liquidate such property and assets if necessary.

Section 4. There is a new R.C.M. section numbered 15-2704 that reads as follows:

15-2704. Reinstatement of defaulting corporations -- duties of secretary of state -- APPLICATION AND FEES. (1) ~~If in his judgment it is in the interest of justice, the~~ THE secretary of state may:

(a) reinstate any corporation which has been dissolved

under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

~~(2) No corporation may be reinstated and restored under subsection (1) unless that corporation first satisfies all requirements provided by law and pays to the secretary of state any filing fees, license fees, penalties, costs, and expenses due and in arrears at the time of the revocation of its charter as well as any fees and penalties which have accrued since the revocation of its charter.~~ A CORPORATION APPLYING FOR REINSTATEMENT SHALL SUBMIT TO THE SECRETARY OF STATE IN DUPLICATE AN APPLICATION SIGNED BY ITS AUTHORIZED REPRESENTATIVE SETTING FORTH:

(A) THE NAME OF THE CORPORATION;

(B) A STATEMENT THAT THE ASSETS OF THE CORPORATION HAVE NOT BEEN LIQUIDATED PURSUANT TO 15-2290 OR 15-2354;

(C) A STATEMENT THAT NOT LESS THAN A MAJORITY OF ITS DIRECTORS HAVE AUTHORIZED THE APPLICATION FOR REINSTATEMENT; AND

(D) IF ITS CORPORATE NAME HAS BEEN LEGALLY ACQUIRED BY ANOTHER CORPORATION PRIOR TO ITS APPLICATION FOR REINSTATEMENT, THE CORPORATE NAME UNDER WHICH THE CORPORATION DESIRES TO BE REINSTATED.

(3) THE CORPORATION SHALL SUBMIT WITH ITS APPLICATION

FOR REINSTATEMENT:

(A) A CERTIFICATE FROM THE DEPARTMENT OF REVENUE STATING THAT ALL TAXES IMPOSED PURSUANT TO TITLE 84 HAVE BEEN PAID; AND

(B) A FILING FEE IN AN AMOUNT EQUAL TO ONE-HALF OF THE FILING AND LICENSE FEES WHICH THE CORPORATION WOULD BE REQUIRED TO PAY IF THE CORPORATION WERE FILING ITS ~~ORIGINAL~~ ARTICLES OF INCORPORATION.

~~(3)~~(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(A) CONFORM AND FILE IN HIS OFFICE REPORTS, STATEMENTS, AND OTHER INSTRUMENTS SUBMITTED FOR REINSTATEMENT; AND

~~(a)~~(B) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

~~(b)~~(C) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) ANY RESTORATION OF CORPORATE RIGHTS PURSUANT TO THIS ACT RELATE BACK TO THE DATE THE CORPORATION WAS INVOLUNTARILY DISSOLVED AND THE CORPORATION SHALL BE CONSIDERED TO HAVE BEEN AN EXISTING LEGAL ENTITY FROM THE DATE OF ITS ORIGINAL INCORPORATION.

~~(4)~~(6) The secretary of state may not order a

reinstatement if 5 years have elapsed since the dissolution.

Section 5. There is a new R.C.M. section numbered 15-2705 that reads as follows:

15-2705. Acquisition of new name by defaulting corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

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Section 7. Section 15-2290, R.C.M. 1947, is amended to read as follows:

"15-2290. Jurisdiction of court to liquidate assets and business of corporation. The district courts shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

(1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the shareholders are deadlocked in voting power, and have failed for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) That the corporate assets are being misapplied or wasted.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that

the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this act, to have its liquidation continued under the supervision of the court.

(d) When ~~an action has been filed by the attorney general to dissolve a corporation~~ a corporation has been dissolved by the secretary of state and it is established that liquidation of its business and affairs ~~should precede the entry of a decree of dissolution~~ is necessary.

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under ~~clause (a), (b), (c), or (e) of~~ this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties

to any such action or proceeding unless relief is sought against them personally."

Section 8. Section 15-2354, R.C.M. 1947, is amended to read as follows:

"15-2354. Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) In an action by a member or director when it is made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two (2) years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(4) That the corporate assets are being misapplied or wasted; or

(5) That the corporation is unable to carry out its

purposes.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(d) When ~~an action has been filed by the attorney general to dissolve~~ a corporation has been dissolved by the secretary of state and it is established that liquidation of its affairs ~~should precede the entry of a decree of dissolution~~ is necessary.

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally."

Section 9. Repealer. Sections 15-2288, 15-2289, 15-2351, 15-2352, and 15-2353, R.C.M. 1947, are repealed.

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